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10/812,358	03/30/2004	Yojiro Kinoshita	001309.00059	4108

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BANNER & WITCOFF, LTD.
1100 13th STREET, N.W.
SUITE 1200
WASHINGTON, DC 20005-4051

EXAMINER

GARRETT, ERIKA P

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3636

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GROUP 3600

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

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MAR 20 2007

GROUP 3600

Application Number: 10/812,358
Filing Date: March 30, 2004
Appellant(s): KINOSHITA ET AL.

Susan Wolfe #33,568
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 1/5/07 appealing from the Office action
mailed 11/8/06.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

4,153,293	SHELDON	5-1979
6,220,661	PETERSON	4-2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2,5 and 12-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Sheldon (4,153,293). Sheldon discloses the use of a backrest for chair (10) comprising frame elements (48) arranged in pairs at right and left sides (figure 2), a flexible support member (22) that bridges the frame elements to support a load of a body of a seated person, the flexible support member bends concaved rearward (when the support member is adjusted) and an adjust mechanism (figure 1) that can change a degree of the support member is bent concaved rearward and that can maintain the degree of the support member is bent concaved rearward against the load of the seated person; wherein the adjust mechanism is engaging structure between a pin (52) one of the support member and the frame adjust mechanism mounted on either element and at least one engaging hole (50) formed on the other and an engaging portion where the pin can engage the engaging hole in various positions, see figures 3 and 5. In regards to claim 2, wherein the adjust mechanism is arranged at least on at least the right and left sides and the degree of the support member is bent concaved rearward and varied

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by fastening one end side of the support member one of multiple different portions of the frame element located at a corresponding side, see figure 2. In regards to claim 5, the engaging hole has multiple engaging edge portions that make an engagement with the pin, and holds the pin when the load of the seated person is applied to the support member and the engaging edge portions are communicating each other and the pin can be changed from a state of engaging an engaging edge portion to state of engaging another engaging edge portion by operating the pin to move along the engaging hole, see figures 3-4. In regards to claim 12, wherein the adjust mechanism has an operating portion (44) to operate the support member in order to change the degree of the support member is bent concaved rearward; and the operating portion is exposed to a side portion of a back face. In regards to claims 13-14, the support member is arranged at a height generally corresponding to a lumbar of the seated person.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sheldon in view of Peterson (6,220,661). Sheldon shows the use of all the claimed invention but fails to show the use of a covered bag shaped upholstery member. Peterson teaches the use of a bag shaped upholstery member. It would have been

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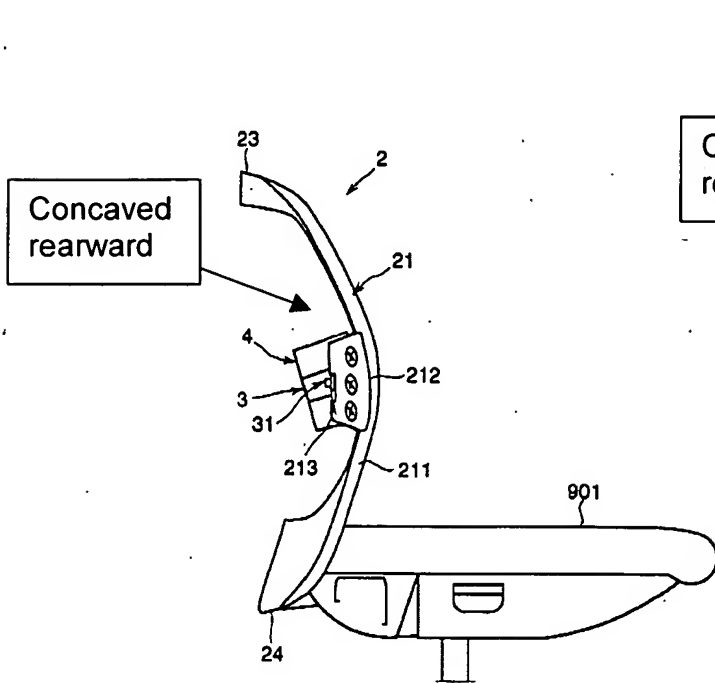
obvious to one of ordinary skill in the art at the time of invention to modify the backrest with a bag shaped upholstery member as taught by Peterson, in order to protect the backrest from being damage.

(10) Response to Argument

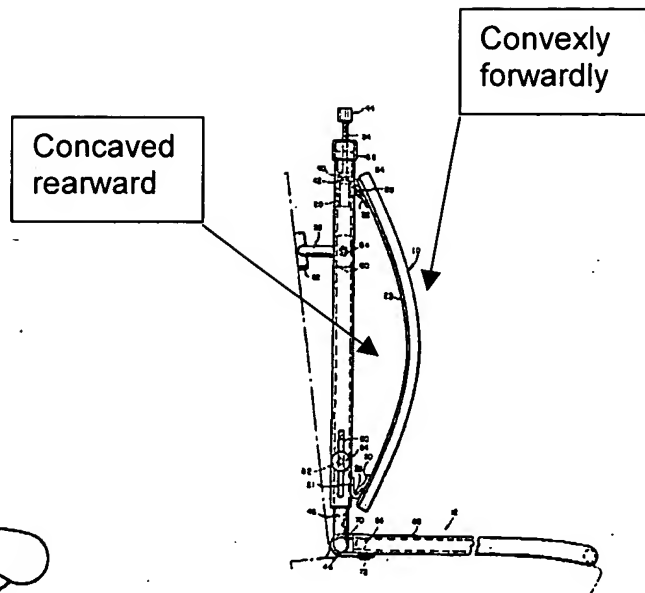
The rejection of the claims under 35 USC 102 should be sustained because Sheldon anticipates every limitation as actually claimed. Appellant's argues: that Sheldon does not disclose 1) a concave rearward support member and 2) an adjustment mechanism having a pin. Contrary to Appellant's argument Sheldon discloses both of these limitations as actually claimed.

First, Appellant's argues that Sheldon does not anticipate the claim because *the support member is not concaved reward in a top plan view*. However, this limitation is not found in the claims. Claim 1 states, "*wherein the flexible support member bends concaved rearward.*" This does not limit the view in which the support member is concaved rearward. Sheldon meets the limitation that is actually claimed because the support member (22) is concaved rearward in the side view. In fact, Appellants own support member (3) is concaved rearward in the side view. See marked up Figures below.

Further, Appellants seem to argue that the support member (22) in Sheldon is convex forwardly in the side view and is therefore not concaved rearwardly. However, the support member (22) is both since it is shaped like an arc, just like Appellant's. See marked up Figures below.



Appellants figure 3



Sheldon's figure 1.

Second, Appellant's argue that Sheldon does not describe the claimed *adjustment mechanism because a screw is not a pin*. However, Sheldon does describe a pin (52) and an engaging hole (50), which meets all of the limitations that are actually in the claim. Claim 3 states, "*the adjust mechanism is an engaging structure where the pin makes an engagement with the engaging hole*".

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Further, Appellant's seem to argue that the bolt of Sheldon is not a pin.

However, a bolt consists of a head and shank, and the shank (end portion) of the bolt is considered as a pin that engages a hole.

The rejection of claims should be upheld because Sheldon anticipated every limitation as actually claimed.

The rejection of the claims under 35 USC 103 should be sustained because Sheldon and Peterson teaches every limitation as described above.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Examiner Garrett 

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March 12, 2007

Conferees:

David Dunn 

Meredith Petravick 